

REMARKS / ARGUMENTS

I. General Remarks and Disposition of the Claims

Please consider the application in view of the foregoing amendments and following remarks. Applicants thank the Examiner for his careful consideration of this application.

At the time of the Non-Final Office Action, claims 1-68 were pending. Applicants respectfully request reconsideration of these claims in light of the amendments and remarks contained herein. In the following remarks, the bolded claim numbers correspond to the six pending independent claims.

II. Remarks Regarding Rejections Under 35 U.S.C. § 103

Claims **1**, 4, 6-9, 11, 12, **13**, 14-16, 20, 21, 23, **25**, 28, 30-33, 35, **36**, 37-39, 43, 44, **46**, **47**, 50, 52-55, 57, **58**, 59-61, 65, 66, and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,360,271 B1 issued to Schuster et al. (hereinafter "*Schuster*") in view of an article titled "Internet Time Synchronization: the Network Time Protocol" that list David L. Mills as author (hereinafter "*Mills*"). In response to applicants' arguments, the Non-Final Action states:

[S]aid "internal time" does not correspond to Applicant's claims language.

(Non-Final Office Action at page 2). While applicants believe that the claims did specify that the time signals were produced at the processors, the claims have been amended to more explicitly set forth this implicit requirement, specifying that the time signals are not "externally derived." This amendment has been made in every independent claim. Support for this clarification is found at least in Figure 1, clocks 130 and 145 and associated discussion in paragraphs [0009] and [0010].

Schuster discloses a system that is quite different from the claimed subject matter. According to its title, abstract, and disclosed embodiments, *Schuster*'s system is "based on synchronized clocks." See Title. *Schuster* generally discloses using a "common clock" to provide synchronized clocks. Col. 5, lines 15-17. More specifically, that common clock can be sent by satellite to GPS receivers at the transmitter and receiver. Fig. 2. A person of ordinary skill would understand from the *Schuster* reference that the system disclosed therein can only be utilized after a synchronization system or method is in place. The only such method taught is to

use a common clock external to the transceiver and receiver.

A *prima facie* case of obviousness has not been established and cannot be established with respect to *Schuster* in view of *Mills*, at least because neither reference discloses or suggests recording the time at which a first signal is received at a processor, where that time is not externally derived. There is no *prima facie* case of obviousness where the asserted combination lacks at least one element. M.P.E.P. § 2143; *In re Vaeck*, 947 F.2d 488, 493, 20 USPQ2d 1438, 1443 (Fed. Cir. 1991).

The Examiner identifies a number of discussions in *Schuster* referencing a receiver time for each packet. However, *Schuster's* discussions of those receiver times are always with respect to the "second time signal," which *Schuster* keeps synchronized based on an external clock. Again, *Schuster* certainly uses sender and receiver times, but it teaches deriving those times externally and it teaches away from adjusting either of those times, because doing so would disrupt the synchronization upon which the system is based.

There is a second, independent reason why the combination of *Schuster* and *Mills* does not establish a *prima facie* case of obviousness - neither reference teaches "setting the first time of the first processor based at least in part on the sum of the second recorded time and a roundtrip time for the third and fourth messages." *Schuster* certainly does not teach this step and it would be contrary to the common clock scheme for it to do so. *Mills* also fails to disclose this step as indicated in the section of the article identified by the examiner.

In Figure 3 and the discussion of section 3.1, *Mills* identifies four timestamps used as part of the process of controlling the local clock: T_i , T_{i-1} , T_{i-2} , and T_{i-3} . Those four timestamps are associated with a roundtrip from server A to peer B (T_{i-3} and T_{i-2}) and back from peer B to server A (T_{i-1} and T_i). There is no disclosure or teaching of creating a sum of that roundtrip time with another recorded time. As a result, *Mills* does not teach the claimed step. *Schuster* controls its clocks based on an external signal - not a calculation based on the claimed sum.

Finally, a person of skill in the art would not adjust the *Schuster* clocks using even the limited control disclosed in *Mills*, because the *Schuster* clocks are externally synchronized. *Schuster* itself states that its system is based on that preexisting synchronization. To adjust the clock in *Schuster* using any of the methods in *Mills* would defeat the purpose of using synchronized clocks. A person of ordinary skill in the art would not modify *Schuster* to defeat

its purpose.

The Examiner rejects the remaining claims based on *Schuster, Mills*, and one of *Topfl, Krause, Shaw*, or *Cognet*. Those claims are all dependent on one of the independent claims discussed above and the latter four references do not remedy the lack of teaching in the primary to references as two the requirements of the independent claims. As a result, those more complex combinations do not render obvious the subject matter of the dependent claims.

III. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the obviousness rejections.

SUMMARY

In light of the above amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile, or electronic mail.

Applicants do not believe that any fees currently are due. Should the Commissioner deem that any fees are due, including any fees for extensions of time, Applicants respectfully request that the Commissioner accept this as a petition therefor, and direct that any additional fees be charged to Baker Botts L.L.P.'s Deposit Account No. 02-0383, Order Number 063718.0330.

Respectfully submitted,

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By:


Michael A. Hawes

Reg. No. 38,487

BAKER BOTTS, L.L.P.

910 Louisiana Street

Houston, Texas 77002-4995

Telephone: 713.229.1750

Facsimile: 713.229.7750

Email: michael.hawes@bakerbotts.com